

AMENDED IN SENATE AUGUST 17, 2004

AMENDED IN SENATE JULY 19, 2004

AMENDED IN ASSEMBLY MAY 26, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2750

Introduced by Assembly Member Steinberg

February 20, 2004

An act to add Section 273 to the Labor Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2750, as amended, Steinberg. State employees: compensation.

Existing law provides that no state officer or employee shall be deemed to have a break in service or to have terminated his or her employment, for any purpose, nor to have incurred any change in his or her authority, status, or jurisdiction or in his or her salary or other conditions of employment, solely because of the failure to enact a Budget Act for a fiscal year prior to the beginning of that fiscal year.

This bill would state the intent of the Legislature to implement the rulings of *Biggs v. Wilson* (9th Cir. 1993) 1 F.3d 1537 and *White v. Davis* (2003) 30 Cal.4th 528 as part of the statutory law of the state. The bill would require, for any period on or after July 1 of a fiscal year until the operative date of the annual Budget Act for that fiscal year, that the Controller consider any class of state employees who are entitled to compensation for overtime work as coming within the class of employees who are reasonably anticipated to work overtime and thereby entitled, pursuant to the federal Fair Labor Standards Act, to

receive full, regular wages for all straight-time hours that the employee is scheduled to work, and to pay those employees on their regularly scheduled payday. ~~It would authorize a state employee to bring an action in a superior court pursuant to the bill to enforce his or her rights and those of other affected state employees upon the failure of a state official to comply with the requirements of the bill.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) The United States Court of Appeals, in *Biggs v. Wilson* (9th
4 Cir. 1993) 1 F.3d 1537, held that the federal Fair Labor Standards
5 Act (FLSA) (29 U.S.C. Sec. 201 and following) requires an
6 employee's wage to be paid on the employee's regular payday
7 regardless of whether the Budget Bill for the relevant fiscal year
8 has been enacted. Subsequently, the California Supreme Court, in
9 *White v. Davis* (2003) 30 Cal.4th 528, determined that the state,
10 in the absence of passage of the Budget Bill, would be in
11 compliance with applicable provisions of the FLSA if the state (1)
12 pays full regular wages and overtime compensation to nonexempt
13 state employees who it reasonably anticipates will work overtime
14 during a given pay period, (2) pays minimum wage rate for all
15 straight-time hours an employee is scheduled to work during the
16 pay period to those nonexempt employees who it reasonably
17 anticipates will not work overtime during a given pay period, and
18 (3) in the following pay period, pays employees all additional
19 sums that are due under the FLSA for the prior pay period based
20 on information that the state obtains through reporting forms that
21 it collects on or immediately following the preceding payday.

22 (b) Because, in the administration of the state payroll system,
23 there is no feasible way to reasonably anticipate who, in a
24 workforce of approximately 150,000 full-time employees, will
25 work overtime during any given pay period, it is reasonable and
26 necessary to consider any nonexempt state employee who is
27 authorized to work overtime as coming within the class of
28 employees who are reasonably anticipated to work overtime and



1 thereby be entitled to receive full, regular wages for all
2 straight-time hours that the employee is scheduled to work.

3 (c) It is the intent of the Legislature in enacting Section 273 of
4 the Labor Code to implement the rulings of the United States Court
5 of Appeals in *Biggs v. Wilson* and the California Supreme Court
6 in *White v. Davis* as a part of the statutory law of this state.

7 SEC. 2. Section 273 is added to the Labor Code, to read:

8 273. (a) The following apply for any period on and after July
9 1 of a fiscal year until the operative date of the annual Budget Act
10 for that fiscal year:

11 (1) Notwithstanding any other provision of this code, for
12 purposes of implementing the requirements of the Fair Labor
13 Standards Act (29 U.S.C. Sec. 201 and following) the Controller
14 shall consider any class of state employees who are entitled to
15 compensation for overtime work as coming within the class of
16 employees who are reasonably anticipated to work overtime and
17 are thereby entitled to receive full, regular wages for all
18 straight-time hours that the employee is scheduled to work. The
19 Controller shall pay those employees on their regularly scheduled
20 payday.

21 (2) For purposes of paragraph (1), the compensation and
22 contribution for employee benefits for represented state
23 employees who are covered by an applicable memorandum of
24 understanding that has been approved by the Legislature shall be
25 at a rate consistent with the memorandum of understanding, and
26 compensation and contribution for employee benefits for state
27 employees excluded from collective bargaining shall be at the rate
28 approved for that purpose by the Department of Personnel
29 Administration prior to the commencement of the fiscal year. As
30 to represented state employees for whom there is no memorandum
31 of understanding in effect, or excluded state employees for whom
32 the department has not approved a compensation package,
33 compensation and contribution for employee benefits shall be at
34 the applicable rate in effect at the expiration of the last fiscal year
35 for which an annual Budget Act was enacted.

36 ~~(b) Upon the failure of a state official to comply with the~~
37 ~~requirements of this section, a state employee may bring an action~~
38 ~~in the superior court pursuant to this section in order to enforce his~~
39 ~~or her rights and those of other affected state employees.~~

40 ~~(c)–~~

- 1 **(b)** “State employee,” for the purposes of this section, means
- 2 an employee defined in Section 18526 or an officer or employee
- 3 of an executive or judicial department of the state.

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